

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
EXECUTIVE RISK INDEMNITY INC.,

Plaintiff,

-against-

WESTPORT INSURANCE CORPORATION,

Defendant.
-----X

Case No. 08 CV 1822

Hon. Denise L. Cote

AFFIDAVIT

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

GREGG D. WEINSTOCK, hereby declares the following under penalties of perjury:

1. I am an attorney duly licensed to practice law before the Courts of the State of New York and the United States District Court for the Southern District of New York and am a member of the law firm of Garbarini & Scher, P.C. I am counsel for Defendant Westport Insurance Corporation ("Westport") in this action, and as such I am fully familiar with the facts and circumstances of this case. The law firm of Walker Wilcox Matousek LLP is also acting as counsel in this case for defendant Westport.

2. I submit this Affidavit in support of Westport's Motion to Stay all proceedings in this action, including but not limited to responsive pleadings, discovery and pre-trial scheduling, pending resolution of an earlier filed, competing declaratory judgment action which involves the identical factual and legal issues and which was filed

by the *same* Plaintiff, Executive Risk Indemnity Inc. ("Executive Risk") against Westport, pending in the Supreme Court of the State of New York, County of New York, Appellate Division, First Department bearing Index No. 603624/05 (the "state court action"). This motion is filed in lieu of an Answer and Westport reserves all of its rights and defenses pending this motion.

3. As more fully set forth in Westport's accompanying memorandum of law, these federal court proceedings should be stayed in the interest of judicial economy to avoid the risk of conflicting results because this Court will be asked to decide identical key issues of law and fact that are currently before the Supreme Court of the State of New York in the earlier filed competing state court action, filed in 2005, which is significantly advanced and which remains pending.

4. These are complex insurance coverage matters which involve complicated, multi-million dollar claims ("the underlying claims") against the law firm Pepper Hamilton LLP ("Pepper") which were tendered under multiple years of professional liability insurance policies issued by four different carriers. In this federal court action, Executive Risk seeks a declaration that the underlying claims are covered by a primary policy of insurance issued by Westport to Pepper for the period 2001-2002. Executive Risk also seeks indemnification from Westport for monies paid by Executive Risk in respect of the underlying claims under its own insurance policy issued to Pepper.


5. In the 2005 state court action, Executive Risk sued Westport, Pepper and Pepper's law partner Roderick Gagne and sought a declaration that the same Executive Risk policies do not provide coverage for the same underlying claims on the basis that the claims are covered by policies issued by other insurers during an earlier time period,

including the same Westport 2001-2002 primary policy, and, that the underlying claims are barred by a prior knowledge exclusion in Executive Risk's policy. Thus, this 2008 action (initiated in Supreme Court, New York County and removed to this Court by Westport) and the 2005 state court action involve the same parties, arise from the same set of facts and encompass the same issues of insurance coverage for the same claims under the same insurance policies. Moreover, the 2005 state court action was filed nearly two and a half years ago and the court has already made significant rulings on the pertinent issues. The state court granted summary judgment to various of the insurer parties which decision is now on appeal to the Appellate Division of the Supreme Court of the State of New York, First Department.

6. To allow this action to go forward in light of the identity of parties and legal and factual issues in the state court action and given the significant progress already made in the state court action would be a waste of judicial resources and could result in inconsistent decisions on the same issue. Therefore, this Court should stay this action pending a resolution of the state court action.

For the foregoing reasons, including the reasons set forth in Westport's accompanying memorandum of law, Westport respectfully requests that this Court stay all proceedings in this action, including but not limited to responsive pleadings, discovery and pre-trial scheduling, pending resolution of a competing declaratory judgment action encompassing the same issues filed by the same Plaintiff, Executive Risk Indemnity Inc. ("Executive Risk"), pending in the Supreme Court of the State of New York, County of New York, and for such other, further, or different relief as to this court may seem just and proper.

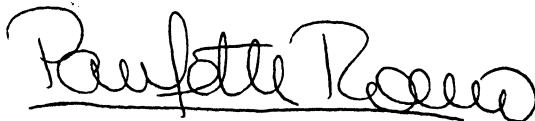
Dated: New York, New York
February 29, 2008

GARBARINI & SCHER, P.C.

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Attorneys for Defendant
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Sworn to before me
the 29th day of
February, 2008



PAULETTE ROMERO
Notary Public, State of New York
No. 01RO6049078
Qualified in Queens County
Commission Expires Oct 2, 2010